

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Willem Blokpoel  
Title: POLISHING IMPLEMENT FOR  
POLISHING SHOES  
Appl. No.: 10/564,730  
Filing Date: 6/22/2006  
Patent No.: 7,636,978  
Grant Date: 12/29/2009  
Examiner: Lee D Wilson  
Art Unit: 3727  
Confirmation Number: 9669

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR  
PATENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Request is being filed in response to the Decision On Request For Recalculation Of Patent Term Adjustment In View of Wyeth And Notice Of Intent To Issue Certificate Of Correction dated April 21, 2010, indicating that the patent term adjustment for the above-identified matter has been determined to be 387 days.

Applicants have calculated PTA for the captioned patent and have determined that the patent is entitled to 454 days of Patent Term Adjustment, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702, 1.703 and 1.704:

(a) Total PTO delay:	464 days
(b) Total Applicant delay:	10 days

Final PTA Determination under 37 CFR §1.703(f): 454 days

In accordance with 1.705(b)(2)(ii), the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are clearly represented in the attached PTA Calculation.

The relevant dates where the applicant is not in agreement with the PTO's determination are discussed in more detail below.

In the attached PTO calculation, the three year pendency period appears to begin on March 29, 2006. Applicants believe that the correct starting date of the three year pendency period is January 17, 2006, as indicated on the attached forms.

Alternatively, it appears that the PTO calculation may incorrectly reduce the PTA based on a Notice of Appeal filed in the present case. In attempting to account for the discrepancy between the PTO's calculation and Applicant's calculation based on the dates of potentially relevant events that occurred during pendency of the application, it is believed that the PTO may be excluding from the three years of pendency of the application a period during which a Notice of Appeal was filed and subsequently addressed in a non-final office action, relying on 35 USC 154(b)(1)(B)(ii), which states that:

if the issue of an original patent is delayed due to the failure...to issue a patent within 3 years after the actual filing date of the application in the United States, not including...any time consumed **by appellate review by the Board of Patent Appeals and Interferences**....the term of the patent shall be extended by 1 day for each day after the end of that 3-year period until the patent is issued.

To the extent that the PTO is excluding the above-identified period from the determination of PTA, Applicant respectfully disagrees with such a position, as the application was never remanded to the Board of Patent Appeals and Interferences, and there was no "time consumed by appellate review by the Board of Patent Appeals and Interferences." As such, there should be no corresponding reduction of PTA based on the filing of the Notice of Appeal in the present application.

In accordance with §1.705(b)(2)(iv)(A), the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704 are clearly represented in the attached PTA Calculation.

Applicants therefore respectfully request that the patent be accorded 454 days PTA.

Fees in the amount of \$200.00 set forth in 37 C.F.R. § 1.18(e) to cover the fee for this request are being paid by credit card via EFS-Web.

The patent is not subject to a terminal disclaimer.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.705, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date     /05-20-2010/    

By     /Matthew J. Swietlik/    

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